



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/709,871	06/02/2004	Michael Zimmermann	LVIP112US	3870
24041 7590 05/28/2008 SIMPSON & SIMPSON, PLLC 5555 MAIN STREET WILLIAMSVILLE, NY 14221-5406			EXAMINER MICHALSKI, SEAN M	
			ART UNIT 3724	PAPER NUMBER
			MAIL DATE 05/28/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/709,871	Applicant(s) ZIMMERMANN ET AL.	
	Examiner SEAN M. MICHALSKI	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,8-11 and 13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,8-11 and 13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Persson (US 3,103,844) in view of Yasanuga (US 5,748,366) in further view of common sense, Blum (US 3,908,878) or Lihl (US 5,048,300).

The Rejection will be discussed in terms of the amended limitations, all other limitations having been addressed in the Final action of 04/09/2007 and the Non-final action of 9/19/2007.

Applicant has added the limitation "said curved rigid guide mounted within the outer shell of said microtome or ultramicrotome".

Applicant alleges now, solely on this basis, the non-obviousness of the claims at bar.

Common sense dictates that enclosing any structure within a housing is within the level of ordinary skill, and that it would be motivated by any one of several common sense reasons, such as obscuring a component from view, preventing fouling or contamination of a component, mechanism or structure.

Additionally, in the art of microtomes it is explicitly shown to place housings around pivoting members (Or curved rigid guides, since in the case of Persson'844 in view of Yasunaga et al. the pivoting member is a curved rigid guide; or pivoting members within housings depending on frame of reference only) as seen in Blum and Lihl, cited above.

It would have been obvious to one of ordinary skill in the art to house the pivot of Persson In view of Yasanuga within a housing as mandated by common sense, Blum and/or Lihl, and any combination thereof. This is a routine design modification which does not rise to the level of patentability.

3. Claims 1-5, 8-10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Persson'844 in view of Yasunaga et al. (US 5,748,366) in further view of Staehle (US 4,277,133) as set forth in the previous action dated 9/19/2007 in further view of common sense, Blum (US 3,908,878) or Lihl (US 5,048,300).

The Rejection will be discussed in terms of the amended limitations, all other limitations having been addressed in the Final Action of 04/09/2007 and the Non-final action of 9/19/2007.

Applicant has added the limitation "said curved rigid guide mounted within the outer shell of said microtome or ultramicrotome".

Applicant alleges now, solely on this basis, the non-obviousness of the claims at bar.

Common sense dictates that enclosing any structure within a housing is within the level of ordinary skill, and that it would be motivated by any one of several common sense reasons, such as obscuring a component from view, preventing fouling or contamination of a component, mechanism or structure.

Additionally, in the art of microtomes it is explicitly shown to place housings around pivoting members (Or curved rigid guides, since in the case of Persson'844 in view of Yasunaga et al. the pivoting member is a curved rigid guide; or pivoting members/curved rigid guides within housings -- depending on frame of reference only) as seen in Blum and Lihl, cited above.

It would have been obvious to one of ordinary skill in the art to house the pivot of Persson In view of Yasanuga within a housing as mandated by common sense, Blum and/or Lihl, and any combination thereof. This is a routine design modification which does not rise to the level of patentability.

4. Claims 1 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Persson'844 in view of in view of Yasunaga et al. (US 5,748,366) in further view of Persson'578 (USPN 3,405,578) as set forth in the Non-final action of 9/19/2007 and in further view of common sense, Blum (US 3,908,878) or Lihl (US 5,048,300).

Applicant has added the limitation "said curved rigid guide mounted within the outer shell of said microtome or ultramicrotome".

Applicant alleges now, solely on this basis, the non-obviousness of the claims at bar.

Common sense dictates that enclosing any structure within a housing is within the level of ordinary skill, and that it would be motivated by any one of several common sense reasons, such as obscuring a component from view, preventing fouling or contamination of a component, mechanism or structure.

Additionally, in the art of microtomes it is explicitly shown to place housings around pivoting members (Or curved rigid guides, since in the case of Persson'844 in view of Yasunaga et al. the pivoting member is a curved rigid guide; or pivoting members within housings depending on frame of reference only) as seen in Blum and Lihl, cited above.

It would have been obvious to one of ordinary skill in the art to house the pivot of Persson In view of Yasanuga within a housing as mandated by common sense, Blum and/or Lihl, and any combination thereof. This is a routine design modification which does not rise to the level of patentability.

5. Claim 9, and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Persson'844 in view of Yasunaga et al. (US 5,748,366) in further view of Staehle (US 4,277,133) as applied to claims 1-5 8-10 and 13 above, and in further view of Persson'578 (USPN 3,405,578) as set forth in the action of 9/19/2007 in further view of common sense, Blum (US 3,908,878) or Lihl (US 5,048,300).

Applicant has added the limitation that the curved rigid guide be disposed within the housing.

Applicant alleges now, solely on this basis, the non-obviousness of the claims at bar.

Common sense dictates that enclosing any structure within a housing is within the level of ordinary skill, and that it would be motivated by any one of several common sense reasons, such as obscuring a component from view, preventing fouling or contamination of a component, mechanism or structure.

Additionally, in the art of microtomes it is explicitly shown to place housings around pivoting members (Or curved rigid guides, since in the case of Persson'844 in view of Yasunaga et al. the pivoting member is a curved rigid guide; or pivoting members within housings depending on frame of reference only) as seen in Blum and Lihl, cited above.

It would have been obvious to one of ordinary skill in the art to house the pivot of Persson In view of Yasanuga within a housing as mandated by common sense, Blum and/or Lihl, and any combination thereof. This is a routine design modification which does not rise to the level of patentability.

Response to Arguments

1. Applicant's arguments with respect to all claims have been considered but are moot in view of the new ground(s) of rejection. Applicant alleged that the previous rejections did not make a prima facie case for containing a curved rigid guide within a housing. The newly added references and rationales provided herein are in direct response to applicants modification of the claims.

Conclusion

2. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to SEAN M. MICHALSKI whose telephone number is (571)272-6752. The examiner can normally be reached on M-F 7:30AM - 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3724

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Sean M Michalski/
Examiner, Art Unit 3724

/Kenneth Peterson/
Primary Examiner, Art Unit 3724